172

(1)

Supreme Court, U.S.
FILED

JUN 26 2010

OFFICE OF THE CLERK

No. 10-452

In The

Supreme Court of the United States

In re:
LUIS RAFAEL FIGUEROA HERNANDEZ
Petitioner.

PETITION FOR WRIT OF HABEAS CORPUS

BRIEF BY PETITIONER LUIS RAFAEL FIGUEROA HERNANDEZ

By Luis Rafael Figueroa Hernandez
UNITED STATES PENITENTIARY
P.O. BOX 305
JONESVILLE, VA 24263-0305
In-Propia Persona

QUESTIONS PRESENTED

1. Whether Petitioner's claim, which is illegal restraint of liberty, and the refusal of the United States District Court and Appeals Court to recognize and address Petitioner's claims which now makes this court a last resort to inquire into the legality of Petitioner's detention constitutes "exceptional circumstances" as to compel this Court's discretionary powers to hear the instant Petition?

2. Whether I, Luis Rafael Figueroa Hernandez, a *man* who has been subject to the Executive Custody of the United States Bureau of Prisons by a de facto agency named Luis Rafael Figueroa Hernandez, Social Security No. 000-00-7964 acting under the color of authority of the United States are entitled through the instant Petition to inquire into the legality of his detention?

3. Whether the de facto individual agency, named, LUIS RAFAEL FIGUEROA HERNANDEZ, Social Security No. 000-00-7964, is a separate legal person from the natural human being *Luis Rafael Figueroa Hernandez*?

4. Whether the de facto individual agency, named LUIS RAFAEL FIGUEROA HERNANDEZ, Social Security No. 000-00-7964 who is acting under the color of authority of the United States can deprive my person, *Luis Rafael Figueroa Hernandez* (a man) of my life and liberty, and the rights, privileges and immunities secured by the United States Federal Constitution as to render petitioner's incarceration unlawful?

PARTIES TO THE PROCEEDING

Pursuant to Rule 14.1, the following list identifies all the parties appearing here and in the court below.

1) The Petitioner, Luis Rafael Figueroa Hernandez, citizen of the Commonwealth of Puerto Rico, who is currently in custody of Bureau of Prisons at United States Penitentiary Lee County, Jonesville, Virginia 24263; and

2) The Respondent here is Terry O'Brien, Warden of the United States Penitentiary Lee County, or successor.

TABLE OF CONTENTS

QUESTIONS PRESENTED vii
PARTIES TO THE PROCEEDING vii
TABLE OF CONTENTS iii
INDEX TO APPENDICES v
TABLE OF AUTHORITIES vii
Cases vii
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED vii
Constitution of the United States vii
United States Code vii
Regulations vii
Federal Rules of Evidence vii
United States Supreme Court Rules vii
Other Authorities vii
Appendices viii
IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR WRIT OF HABEAS CORPUS 1
PETITIONER'S CLAIM EMANATES FROM 1
JURISDICTION 1
CONSTITUTIONAL AND STATUTORY 1
PROVISIONS INVOLVED 1

Constitutional 1

STATUTORY PROVISIONS 3

Statutes 3

Federal Rules 5

Regulations 5

STATEMENT OF THE FACTS PURSUANT TO RULE 20.1 6

STATEMENT OF THE FACTS PURSUANT TO RULE 20.4(a) 7

STATEMENT OF THE CASE 9

REASONS FOR GRANTING THE WRIT 11

The illegality of Petitioner's detention constitutes "exceptional circumstances" as to compel this Court's discretionary powers to hear the instant Petition 11

Petitioner is entitled through the instant Petition to inquire into the leaglity of his detention .. 16

The de facto individual agency, named LUIS RAFAEL FIGUEROA HERNANDEZ, is a separate legal person from the natural human being Luis Rafael Figueroa Hernandez 19

The de facto individual agency deprives Petitioner of life, liberty, and the rights, privileges and im-munities secured by the U.S.

Federal Consti-tution rendering Petitioner's incarceration un-lawful 19

CONCLUSION 22

INDEX TO APPENDICES

APPENDIX A – Letter by Mr. William K. Suter, Clerk of the United States Supreme Court returning the Petition for Writ of Habeas Corpus for corrections of compliance failures with the rules of the court dated August 23, 2010.

APPENDIX B – Letter by Mr. William K. Suter, Clerk of the United States Supreme Court returning the Petition for Writ of Habeas Corpus for corrections of compliance failures with the rules of the court dated June 28, 2010.

APPENDIX-C – Letter by the Clerk of the Court of the United States Supreme Court Regarding Failure to Comply with Rules 20.1 and 20.4(a) dated June 4th, 2010.

APPENDIX-D – Application for Habeas Corpus under 28 U.S.C. § 2241 within the United States District Court for the Western District of Virginia

APPENDIX-E – Memorandum Opinion by Glen E. Conrad, United States District Judge Denying Petitioner Habeas Corpus

APPENDIX-F – Motion for Reconsideration Pursuant to Federal Rules of Civil Procedures 59(e) of an Order Entered by the District Court Dismissing Petitioner's Habeas Corpus Request Under Title 28 USC 2241(c)(3) and (4)

APPENDIX-G – Order by Glen E. Conrad, United States District Judge, Denying Petitioner's Motion for Reconsideration

APPENDIX-H – Timely Notice of Appeal Pursuant to Federal Rules of Appellate Procedures Rules 3 and 4 Appealing the Order Entered by the District Court on January 21, 2010, and February 18, 2010

APPENDIX-I – Informal Brief Filed by the Petitioner in the United States Court of Appeals for the Fourth Circuit Case Number 10-6265

APPENDIX-J – Unpublished Per Curiam Opinion rendered by the Fourth Circuit Court of Appeals Affirming the United States District Court Dismissing Petitioner's Habeas Corpus

TABLE OF AUTHORITIES

United States Code

5 U.S.C. § 552(a)(2) 5, 10
21 U.S.C. § 846 ..... 5, 10
28 U.S.C. § 1251 3
28 USC § 1251(a) 12
28 U.S.C. § 1651 3
28 USC § 1746 21
28 U.S.C. § 2241 4
28 U.S.C. § 2241(a) 17
28 U.S.C. § 2241(b) 12
28 U.S.C. § 2241(c)(4) 18
28 U.S.C. § 2242 ..... 4, 12, 13, 17
42 U.S.C. § 1983 11

Regulations

26 CFR § 1.14101(c)(3) 5, 10

Federal Rules of Evidence

Rules of Evidence Rule 201 ..... 5, 9

United States Supreme Court Rules

Rule 20.1 ..... 6, 7
Rule 20.4(a) 5, 6, 7, 9, 12
Rule 29 5
Rule 33.1(d) 1, 5
Rule 33.1(h) 5

Other Authorities

Black's Law Dictionary 10

Appendices

Appendix C 13
Appendix D 14
Appendix E 14
Appendix F 14
Appendix G 14
Appendix H 14
Appendix I 14
Appendix J 15

IN THE SUPREME COURT OF THE UNITED STATES PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner prays this Honorable Court to issue the instant Writ in order to test the legality of his detention.

PETITIONER'S CLAIM EMANATES FROM

The United States District Court for the District of New Jersey, Case # 98-105-0014, presided by Judge Joseph H. Rodriguez; title United States v. LUIS FIGUEROA. Pursuant to Rule 33.1(d).

JURISDICTION

This court has jurisdiction under 28 USCS § 1251(a) as well as §§ 1651(a), 2241(a), 2242 and Article III of the United States Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

CONSTITUTIONAL
Article I § 9, Cl. 2

> The privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Article III provides, in relevant part, that:

> **Section 1.** The judicial Power of the United States, shall be vested in one [S]upreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the [S]upreme and inferior Courts, shall hold their Offices during good Behaviours, and shall at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
>
> **Section 2.** The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;--to all Cases affecting Ambassadors, other public Ministers and Consuls;--to all Cases of admiralty and maritime Jurisdiction;--to Controversies to which the United States shall be a Party;--to Controversies between two or more states;--between a State and Citizens of another State;--between citizens of different States;--between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects.

The Fourth Amendment provides, in relevant part, that:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and [N]o warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

The Fifth Amendment provides that:

> [N]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb,; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without "due process of law;" nor shall private property be taken for public use, without just compensation.

STATUTORY PROVISIONS:

STATUTES

28 USCS § 1251, et seq.

Original Jurisdiction

(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more States.

28 USCS §§ 1651, et seq.

Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

28 USCS §2241, et seq.

Power to grant a writ

(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions. The order of a circuit judge shall be entered in the records of the district court of the district wherein the restraint complained of is had.

28 USCS §2242 et seq.

Application

Application for a writ of habeas corpus shall be in writing signed and verified by the person for whose relief it is intended or by someone acting in his behalf.

It shall allege the facts concerning the applicant's commitment or detention, the name of the person who has custody over him and by virtue of what claim or "authority", if known.

It may be amended or supplemented as provided in the rules of procedure applicable to civil actions.

"If addressed to the Supreme Court, a justice thereof of a circuit judge it shall state the reasons for not making application to the district court of the district in which the applicant is held."

5 U.S.C. § 552(a)(2)
21 USCS § 846

FEDERAL RULES

Supreme Court Rule 20.4(a)
Supreme Court Rule 33.1(h)
Supreme Court Rule 33.1(d)
Supreme Court Rule 29
Rules of Evidence Rule 201

REGULATIONS

26 CFR § 1.14101(c)(3)

STATEMENT OF THE FACTS PURSUANT TO RULE 20.1[1]

Luis Rafael Figueroa Hernandez, hereinafter, as Petitioner, and in compliance with Rule 20.1 states the following facts:

The Writ for this case will be in aid to this Court's appellate jurisdiction based on the fact that the issue presented herein has been presented to the United States District Court for the Western District of Virginia for consideration and the Court misrepresented Petitioner's facts and law in reaching its decision.

Petitioner then referred the aforementioned Misrepresentation to the Fourth Circuit Court of Appeals by means of appeal, who then affirmed the District Court's decision by a Per Curiam Unpublished Opinion that deprived my issue of being heard in its merits in violation of due process of law. Therefore, Petitioner is entitled to file a Petition for a Writ of Certiorari in which the instant Petition will be in aid to this court's appellate jurisdiction.

---

[1] See "Letter by Clerk of the Court, Honorable William K. Suter indicating compliance failures in reference to court Rules 20.1 and 20.4(a)" (Appendix A)

The above mentioned conduct by the District Court, and Appellate Court, such as refusing to address Petitioner's claim as presented makes this a rare case that creates an "Exceptional Circumstance." Petitioner also alleges "Illegal Restraint of Liberty," "Deprivation of Rights, Privileges and Immunities," secured by the United States Federal Constitution which clearly warrants the exercise of this Court's discretionary power.

The relief requested cannot be obtained in any other form because it is only allowed to be presented in a Habeas form and cannot be obtained from any other court because the Appellate and District Court abused the process prescribed by the statute, by misrepresenting the facts, which led to a result out of the process' scope and the dismissal of the case.

Wherefore, "Exceptional Circumstances," exist as to warrant this Court's discretionary Powers as required by Rule 20.1.

STATEMENT OF THE FACTS PURSUANT TO RULE 20.4(A)

Luis Rafael Figueroa Hernandez, hereinafter referred to as Petitioner, and in Compliance with Rule 20.4(a) states the following facts:

This Court must *take notice* that the instant Habeas Corpus Petition was presented to the United States District Court for the Western District of Virginia for adjudication. However, the Court misrepresented Petitioner's facts, which led to an order of denial. Thereafter, a Motion for Reconsideration was filed addressing the Misrepresentation by the District Court in an attempt to bring to the Court's attention this issue and correctly address Petitioner's claims as presented. Subsequently, the Court never took note of assertions made by Petitioner regarding Misrepresentation and again refused to address Petitioner's claim.

Thereafter, Petitioner filed within the 4th Circuit Court of Appeals an appeal challenging the lower court's decision for ***abuse of discretion*** and ***denying Petitioner's access to the Court*** based on the fact that Petitioner's claim has been misrepresented and never addressed by the District Court. However, the appeals court followed in the District Court's footsteps and found no reversible error and affirmed the lower court's decision.

Because said Petition has been presented to the lower courts (District Court and Appeal Courts), and they refused to properly address the facts presented, therefore Petitioner cannot obtain adequate relief in any other court, which now leads

Petitioner to file this Habeas Corpus in the Supreme Court of the United States, invoking his protection and right to be heard, pursuant to his claim.

The foregoing produces valid reasons for this application not to be resubmitted to the District Court, or Appeals Court, as the aforementioned Courts are refusing to address – as well as adjudicate – the issues presented before them.

Wherefore, "Exceptional Circumstances," exist as to warrant this Court's discretionary Powers as required by Rule 20.4(a).

STATEMENT OF THE CASE [2]

On June 3, 1998, in the City of Camden, State of New Jersey, a Grand Jury was sat by designation upon request of the United States District Attorney, for an inquiry into possible violations of Criminal Laws of the United States concerning misfeasance in

---

[2] Pursuant to the RULES OF EVIDENCE RULE 201, this Court is placed on Judicial Notice of Adjudicative facts, section (b) and (d) in regards to the Statement of the Case stated herein.

public office[3] by an appointed officer or employee of the United States within the District.

The same day a True Bill, 98-105, was returned by a Grand Jury charging an Instrumentality of the United States[4], namely LUIS RAFAEL FIGUEROA HERNANDEZ, Individual Social Security Number 000-00-7964, with Conspiracy to Possess with Intent to Distribute a Controlled Substance, in violation of Title 21 USCS § 846.

On June 4, 1998, I, Luis Rafael Figueroa Hernandez, a man/natural person; citizen of the Commonwealth of Puerto Rico, domiciled therein, was arrested by Federal and State Agents, and held in custody for an act done or omitted under an alleged right, title, authority, privilege, protection, or exception claimed under the commission, order, or sanction, of a Foreign State, or under the color

---

[3] *Black's Law Dictionary* defines misfeasance in public office as "The tort of excessive, malicious, or negligent exercise of statutory powers by a public officer. – Also termed *malfeasance*.

[4] "Individuals" as defined in 5 U.S.C. § 552(a)(2) and 26 CFR § 1.14101(c)(3). These "Individuals" are all government Instrumentalities and entities as defined in Titled 5 of the U.S. Code, which only regulates the conduct of government employees and not the private public.

thereof[5], the validity and effect of which depends upon the Law of Nations.

It is clearly shown in the statement of this case that on June 3, 1998, the UNITED STATES DISTRICT ATTORNEY was in possession and control of the private entity, namely LUIS RAFAEL FIGUEROA HERNANDEZ, S.S. # 000-00-7964. It is also clear that this private entity was acting, or was used as an assistant by a federal official (the District Attorney's Office) to enforce federal law. The practice used by the United States District Attorney is illegal and unconstitutional because it deprives a petitioner of life and liberty and of the rights, privileges, and immunities secured by the United States Federal Constitution.

REASONS FOR GRANTING THE WRIT

QUESTION 1

Whether Petitioner's claim, which is illegal restraint of liberty, and the refusal of the United States District Court and Appeals Court to recognize and address Petitioner's claims which now makes this court a last resort to inquire into the legality of Petitioner's detention constitutes "exceptional circumstances" as to compel this Court's discretionary powers to hear the instant Petition?

---

[5] See *Civil Rights Act of 1871*, now codified in 42 USCS § 1983.

In the case at bar, Petitioner claims that illegal restraint of liberty alone constitutes an "exceptional circumstance" for the purpose of compelling this Court to use its discretionary powers in addressing the instant petition. However, other factors also compel this court to address the instant Petition, i.e., the integrity of the function of the executive, legislative, and judicial branches of the government.

This honorable court has discretion to hear this Petition in the first instance: under 28 USC § 1251(a), as well as under Article III of the United States Constitution, 28 USC § 2241(b) and 28 USC § 2242. See, e.g. *Ex Parte Aberathy*, 320 U.S. 219 (1943)(per Curiam). Although such discretion is "sparingly" exercised, Sup. Ct. Rule 20.4(a), this case presents factors which compel exercise of its discretion: namely, the interest involved; the significant impact of the issues; and the preservation of the integrity of the judicial branch of the government. See *Sunal v. Large*[6], 322 U.S. 174, 178-

---

[6] **Habeas Corpus, use as substitute for appeal – when permissible.** Illustrative of instances in which the writ of habeas corpus has been used to review convictions in Federal courts either without consideration of the adequacy of relief by appeal or where an appeal would have afforded an adequate remedy, are those where the conviction was under a Federal statute alleged to be unconstitutional, *or was by a court whose jurisdiction over the person* or the offense was *challenged* or

180 (1947) (exemplifying "exceptional circumstances"); *Ex Parte Grossman*, 267 U.S. 87, 108, 121 (1925)(determining scope of Presidents pardon power presents "[e]xceptional case[]"); *New York v. Eno*, 155 U.S. 89, 93-97 (1894)(explaining "exceptions" as "case of urgency, involving the authority and operation of the government"). See also *Ex Parte Hudgings*, 249 U.S. 378, 379-380 (1919)("exceptions" stand out to general rule prohibiting by-passing "other available sources of judicial power" and to determine if the case is "of such exception character" depends "upon the analysis of the merits"); *United States ex. rel. Norris v. Swope*, ____ U.S. ____ 96 L.Ed.1381, 1382 (1952)(Justice Douglas in chambers).

However Petitioner must also comply with 28 USCS § 2242, which provides in relevant part:

> If addressed to the Supreme Court, a justice thereof, or a Circuit Judge, it shall state the reasons for not making application to the District Court of the District in which the applicant is held.

Petitioner will show the reasons for not making this application to the District Court in the District where applicant is detained, circumstances

---

where the trial or sentence violated specific constitutional guaranties; but these exceptions do not create an absolute rule.

which are "exceptional," as to compel this court to address the instant Petition.[7]

On January 20, 2010, in the United States District Court for the Western District of Virginia, Petitioner filed a Habeas Corpus challenging the legality of his detention. (See Appendix D)

On January 21, 2010, Petitioner's Habeas Corpus Petition was denied in an order issued by U.S.D.J. Glen E. Conrad. (See Appendix E)

On January 29, 2010, Petitioner filed, within the same court, a Motion for Reconsideration Alleging the following:

1) Misrepresentation of the facts and laws on which the court based its decision.
2) Objection to the way the court applied the liberal construction to Petitioner's habeas corpus Petition. (See Appendix F)

On February 18, 2010, Petitioner's Motion for Reconsideration was denied by the District Court with the opinion that the Court had reviewed the relevant factors and the law on which the case was

---

[7] **Take notice** that the presentation of the facts that took place within the United States District Court and the United States Appellate Court is only to show that "**exceptional circumstances**" exist in order to invoke this Court's discretionary powers.

decided and found no ground on which the judgment previously entered should be altered or amended in any way. (See Appendix G)

On February 12 and 23, 2010, Notices of Appeal were filed by Petitioner with the U.S. Court of Appeals for the Fourth Circuit, appealing both orders entered by the U.S. District Court. (Appendix H)

On March 8, 2010, Petitioner filed within the Appellate Court an Informal Opening Brief (See Appendix I)

On May 4, 2010, the U.S. Court of Appeals for the Fourth Circuit issued an unpublished Per Curiam opinion denying Petitioner's Appeal on the grounds that "[a]fter having reviewed the relevant facts and the law in which the case was decided, the court finds no reversible error. Accordingly, this court affirms for the reasons stated by the District Court." (See Appendix J)

This Honorable Court must notice after careful examination of the record that the U.S. District Court abused the process prescribed by the statute and misrepresented Petitioner's Statement of Facts in order to obtain a result out of the process' scope and the dismissal of the case.

Now, because the U.S. District Court and thereafter the U.S. Court of Appeals (4th Cir.) did not address Petitioner's complaint as presented, "exceptional circumstances" have arisen based on the fact that I have a right to be heard on the merits of my claim(s), as well as my due process protection which insures that a Petitioner's facts must be refuted before Petitioner is denied in the relief requested.

Therefore, after having shown through the statement of the facts and the law that "exceptional circumstances" exist for this court to exercise its discretionary power, this Petition is properly presented to this Honorable Court to address the illegal restraint raised herein.

QUESTION 2

Whether I, Luis Rafael Figueroa Hernandez, a *man* who has been subject to the Executive Custody of the United States Bureau of Prisons by a de facto agency named Luis Rafael Figueroa Hernandez, Social Security Number 000-00-7964 acting under the color of authority of the United States are entitled through the instant Petition to inquire into the legality of his detention?

"[F]ederal court [habeas] jurisdiction is conferred by an allegation of unconstitutional restraint" for which "[t]he jurisdictional prerequisite is .. detention simplicitier." *Fay v. Noia*, 372 U.S.

391, 426, 430 (1963). "The privilege of Habeas Corpus shall not be suspended unless when in cases of rebellion of invasion to public safety may require it" *Article I*, § 9, Cl. 2, U.S. Constitution, "which necessarily impl[ies] judicial action'" *Fay v. Noia*, 372 U.S. at 406, quoting *Ex Parte Yerger*, 75 U.S. (8 wall.) 85, 98-99 (1868). When this clause "was written into the federal constitution it was settled that the writ lay to test any restraint contrary to the fundamental law ... embodied in the written constitution." 372 U.S. at 405, 426 ("at the time ... Habeas was available to remedy any kind of governmental restraint contrary to the fundamental law.")

"[A]t the absolute minimum, the suspension clause protects the writ as it exists in 1789," *Ins v. St. Cyr*, 533 U.S. 289, 301 (2001), quoting *Felkner v. Tarpin*, 518 U.S. 651, 663-664 (1996), which encompassed detentions based on the errors of law, including the erroneous application or interpretation of the statutes" and was available to "answer" "pure questions of law" like those raised herein. 533 U.S. at 303, 305.

This court has explicit jurisdiction based on the statement of facts presented to entertain and grant this extraordinary writ, 28 USCS § 2241(a) and 28 USC § 2242. In the case at bar, Petitioner avers that he has been detained by an individual

agency acting under the color authority of the United States government, which in turn deprives the Petitioner of his life and liberty and now Petitioner invokes the protection of the writ.

The "Writ of Habeas Corpus" is a mechanism provides to inquire into the right of an agency of government[8] to deprive a person of his liberty, at any stage, when a person is placed in restraint by an authority[9], the legitimate of which, or of the edicts of which he challenges and perhaps the most valuable and fundamental of these rights, is the right of the person to freedom, of which the individual cannot be deprived, except through the machinery which guarantees the fundamental right of due process. (See *Ex Parte Stewart*, D.C.S.D. California, 47 F.Supp. 410; 1942 U.S. Dist. Lexis 2308, No. 2341).

For the foregoing facts and law, this court has the authority to issue the writ requested herein.

---

[8] See *Osborne v. Bank of U.S.*, 22 U.S. 738 (1824) "All powers of the government must be carried into operation by Individual agency, through the medium of public offices."

[9] 28 U.S.C.S. § 2241(c)(4) provides "He, being a citizen of a foreign state and domiciled therein is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of any foreign state, or under color thereof, the validity and effect of which depend upon the law of nations;"

QUESTION 3

Whether the de facto individual agency, named, LUIS RAFAEL FIGUEROA HERNANDEZ, Social Security No. 000-00-7964, is a separate legal person from the natural human being *Luis Rafael Figueroa Hernandez*?

Petitioner's statement of the facts, if not rebutted, clearly shows that he (Petitioner) is a separate person from the instrumentality of the United States named LUIS RAFAEL FIGUEROA HERNANDEZ, individual social security no. 000-00-7964. However, in order to prevail on his claim, Petitioner respectfully requests that this court make a final determination in regards to the separateness of these persons in order to discern the rights and responsibilities of both.[10]

Therefore, it is requested that a judgment be rendered making a final determination of the distinction of these two persons.

QUESTION 4

Whether the de facto individual agency, named LUIS RAFAEL FIGUEROA HERNANDEZ, Social Security

---

[10] See *Cedric Kushner Promotions v. King*, 150 L.Ed.2d 198, 533 U.S. 158 (where the Supreme Court held that a corporate owner/employee was a natural person and distinct from the corporation itself which was a legally distinct entity with different rights and responsibilities due to its different legal status.

No. 000-00-7964 who is acting under the color of authority of the United States can deprive my person, *Luis Rafael Figueroa Hernandez* (a man) of my life and liberty, and the rights, privileges and immunities secured by the United States Federal Constitution as to render petitioner's incarceration unlawful?

The last and final question presented to this honorable Court for adjudication is to inquire as to whether this individual agency named LUIS RAFAEL FIGUEROA HERNANDEZ, Social Security No. 000-00-7964, who is acting under the color of authority of the United States is depriving my person of life and liberty without affording me the rights, privileges, and immunities secured by the United States Federal Constitution which makes Petitioner's detention unlawful. Now based on Petitioner's statement of facts, it is clearly established that the Individual Agency was charged in a superseding Indictment (No. 98-105). The warrant was issued against the Individual Agency, which subjected my person to unlawful arrest. The Individual Agency was committed to the custody of the United States Bureau of Prisons, which in turn subjected me, Luis Rafael Figueroa Hernandez, a man/natural, who has never been indicted, convicted, or sentenced, to be held in custody unlawfully and in violation of the immunities secured by the United States Federal Constitution, specifically the Fourth Amendment which provides in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against

> unreasonable searches and seizures, shall not be violated, and [N]o warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

And the Fifth Amendment which states:

> [N]o person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb,; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without "due process of law;" nor shall private property be taken for public use, without just compensation.

It is clear that this entity which is acting under the color of authority of the United States government deprived my person of the rights, privileges, and immunities secured by the United States Federal Constitution. Wherefore, Petitioner's detention is illegal and the Court must issue an order releasing my person from this illegal restraint.

For the foregoing reasons, Petitioner requests that if no evidence is produced by the Respondent showing the authority of the abovementioned agency to deprive my person of life and liberty and/or the rights, privileges and immunities secured by the United States Federal Constitution, therefore I should be discharged from this illegal restraint.

I declare under penalty of perjury and in compliance with 28 USC § 1746 that the foregoing is true and correct to the best of my knowledge and belief.

CONCLUSION

Illegal restraint of liberty is a serious matter in which this Court, being a high court of the United States, and the last resort in which Petitioner can invoke the protections guaranteed by the United States Federal Constitution, "exceptional circumstances" exist for this court to hear Petitioner's claims.

Wherefore if Petitioner's facts and law are not refuted by the Respondent, as is required by Due Process of law, Petitioner requests this Honorable Court to issue an order for an immediate release from this illegal and unconstitutional restraint and/or any other remedy as law and justice requires.

For the reasons states herein, this "PETITION FOR WRIT OF HABEAS CORPUS" should be granted.

Executed on this 20 day of September, 2010.

Respectfully submitted,

Luis Rafael Figueroa Hernandez

Luis Rafael Figueroa Hernandez

In Propia Person

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

August 23, 2010

Luis Rafael Figueroa-Hernandez
USP
P.O. Box 305
Jonesville, VA 24263-0305

RE: In Re Luis Figueroa-Hernandez

Dear Mr. Figueroa-Hernandez:

Returned is one copy of the petition for writ of habeas corpus in the above-entitled case postmarked on July 14, 2010 and received on July 21, 2010, which fails to comply with the Rules of this Court.

Your petitions and money order in the amount of $300.00 are herewith returned.

Kindly correct the petition so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

You must submit forty copies of the petition for writ of habeas corpus.

Sincerely,
William K. Suter, Clerk
By: s/ CLAYTON R. HIGGINS, JR.
Clayton R. Higgins, Jr.
(202) 479-3019

RECEIVED
JULY 21 2010
OFFICE OF THE CLERK
SUPREME COURT OF THE U.S.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001
August 23, 2010

Luis Rafael Figueroa-Hernandez
USP
P.O. Box 305
Jonesville, VA 24263-0305

RE: In Re Luis Figueroa-Hernandez

Dear Mr. Figueroa-Hernandez:

Returned is one copy of the extraordinary writ of habeas corpus in the above-entitled case received on June 26, 2010, which fails to comply with the Rules of this Court.

If you intend to pay the $300 docket fee, the petition must be in booklet format and on paper that measures 6 1/8 by 9 ¼ inches. Rule 33.1(a).

The appendix to the petition as required by Rule 14 must be in booklet format and on paper that measures 6 1/8 by 9 ¼. Rule 33.1(a).

Rule 33.1(c) prohibits the use of spiral, plastic, metal or string bindings. Staples may be used, at least two, along the left margin covered with tape.

The petition must bear a suitable cover consisting of heavy paper, front and back. Rule 33.1(e).

The caption of the case must appear as appropriate in this Court. Rule 34.1(c).

The cover of the petition must bear the nature of the proceeding and the name of the Court from which the action is brought. Rule 34.1(d).

The cover of the petition must bear the title of the document. Rule 34.1(e).

The text of the petition and appendix must be typeset in a Century family (e.g., Century Expanded, New Century Schoolbook, or Century Schoolbook) 12-point type with 2-point or more leading between lines. The typeface of footnotes must be 10-point or larger with 2-point or more leading between lines. Rule 33.1(b).

The materials contained in the appendix have been photoreduced which is prohibited. The size of the print must comply in all respects with Rule 33.1(b).

All of the pages in the petition and appendix must contain margins of at least three-fourths of an inch on all sides. The text field, including footnotes, may not exceed 4 1/8 by 7 1/8 inches. Rule 33.1(c).

The text of the document must appear on both sides of the pages. Rule 33.1(b).

The questions presented for review must be followed by the list of parties (if all do not appear on the cover), corporate disclosure statement (if applicable), table of contents, table of authorities, citations of the official and unofficial reports of opinions and orders entered in the case, statement of the basis for jurisdiction, constitutional provisions, treaties, etc., statement of the case, reasons for granting the writ, and the appendix. Rule 14.1.

The pages contained the questions presented for review through table of authorities should be numbered (i), (ii), (iii), etc. The following pages should be numbered 1, 2, 3, etc.

The word limit of the text of a petition is 9,000 words. Rule 33.1(g)(i).

Your petitions and money order in the amount of $300.00 are herewith returned.

Kindly correct the petition and appendix so that it complies in all respects with the Rules of this Court and return it to this Office promptly so that it may be docketed. Unless the petition is submitted to this Office in corrected form within 60 days of the date of this letter, the petition will not be filed. Rule 14.5.

Three copies of the corrected petition must be served on opposing counsel. Rule 29.3.

When making the required corrections to a petition, no change to the substance of the petition may be made.

You must submit a certificate stating that the petition complies with the word limitation. The certificate must state the number of words in the document and must be separate from the petition. Rule 33.1(h). If the certificate is signed by a person other than a member of the Bar of this Court, the counsel of record, or the unrepresented party, it must contain a notarized affidavit or declaration in compliance with 28 USC 1746.

Sincerely,
William K. Suter, Clerk
By: s/ CLAYTON R. HIGGINS, JR.
Clayton R. Higgins, Jr.
(202) 479-3019

RECEIVED
JULY 21 2010
OFFICE OF THE CLERK
SUPREME COURT OF THE U.S.

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, DC 20543-0001

June 4, 2010

Luis Figueroa #1677-069
P.O. Box 305
Jonesville, VA 24263-0305

RE: In Re Luis Rafael Figueroa-Hernandez

Dear Mr. Figueroa:

The above-entitled petition for an extraordinary writ of habeas corpus was received on June 2, 2010. The papers are returned for the following reason(s):

The petition does not show how the writ will be in aid of the Court's appellate jurisdiction, what exceptional circumstances warrant the exercise of the Court's discretionary powers, and why adequate relief cannot be obtained in any other form or from any other court. Rule 20.1.

The petition does not state the reasons for not making application to the district court of the district in which you are held. Rule 20.4(a) pertaining to petitions for writs of habeas corpus.

No motion for leave to proceed in forma pauperis, signed by the petitioner or by counsel is attached. Rules 33.2(a) and 39.

No notarized affidavit or declaration of indigency is attached. Rule 39. You may use the enclosed form.

A copy of the corrected petition must be served on opposing counsel.

Sincerely,
William K. Suter, Clerk
By: s/ CLAYTON R. HIGGINS, JR.
Clayton R. Higgins, Jr.
(202) 479-3019

Enclosures

RECEIVED
JUNE 4 2010
OFFICE OF THE CLERK
SUPREME COURT OF THE U.S.

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA

FORM FOR USE IN APPLICATIONS
FOR HABEAS CORPUS UNDER 28 U.S.C. § 2241

CLERK'S OFFICE U.S. DISTRICT COURT
AT ROANOKE VA – FILED

JAN 20 2010

JOHN E. CORCORAN, CLERK
BY s/, DEPUTY CLERK

7:10-cv-00027

Luis Rafael Figueroa Hernandez
(Name)

16277-069
(Prison Number)

United States Penitentiary Lee County, Jonesville, VA 24263-0305 (Place of Confinement)

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF VIRGINIA

Case Number 7:10-CV-00027 (to be supplied by Clerk, U.S. District Court)

Luis Rafael Figueroa Hernandez / LUIS FIGUEROA-AN ENTITY OF THE U.S., PETITIONER
(Full Name – Include Name Under Which You Were Convicted)

v.

TERRY O'BRIEN, WARDEN,
RESPONDENT
(Name of Warden, Superintendent, Jailor, or Authorized Person Having Custody of Petitioner)

Generally, if the petitioner wishes to attack federal judgment under which a sentence was imposed he should file a motion under 28 U.S.C. § 2255, in the federal court which entered the judgment.

PETITION

Name and location of court which entered the judgment of conviction under which you are presently confined:

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY, 400 Cooper St., Camden, NJ 08101

Date of judgment of conviction: March 27, 2003

Length of sentence: 420 months

Sentencing Judge: JOSEPH H. RODRIGUEZ

Nature of offense or offenses for which you were convicted: Conspiracy to possess with intent to Distribute Controlled Substance, contrary to Title 21 U.S.C. 846.

Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time? Yes [ ] No [X]

Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack? Yes [X] No [ ]

If so, give name and location of court which imposed sentence to be served in the future:

CAMDEN COUNTY SUPERIOR COURT FOR THE STATE OF NEW JERSEY, Hall of Justice, 101 South 5th Street, Camden, NJ 08103

Give date and length of sentence to be served in future: Sentence imposed: 30 years with 30 years mandatory minimum/concurrent with Federal Sentence.

Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the future sentence? Yes [X] No [ ]

State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the

facts supporting each ground. Attach additional sheets if necessary.

Ground one: "UNLAWFUL RESTRAINT OF LIBERTY"

Supporting FACTS: On June 3, 1998 in the city of Camden in the STATE OF NEW JERSEY, a Grand Jury, sitting by designation upon request of the UNITED STATES DISTRICT ATTORNEY, was inquiring into possible violation(s) of the criminal laws of the UNITED STATES concerning malfeasance of office involving organized criminal activities by an appointed officer or employee of the UNITED STATES within the District.

That same day, a "True Bill" No. 98-105-0014 was returned charging an instrumentality of the UNITED STATES named LUIS FIGUEROA, Social Security Number 582-04-7964, with Conspiracy to Possess with Intent to Distribute a Controlled Substance, contrary to Title 21 U.S.C. 846.

On June 4, 1998 in the city of Ciales in the Commonwealth of Puerto Rico "Petitioner" Luis Rafael Figueroa Hernandez, the private man, a citizen of the Commonwealth of Puerto Rico, domiciled therein, was arrested by federal and state agents and held in custody for an act done or omitted under an alleged right, title, authority, privilege, protection, or exemption claimed under the

commission, order or sanction of the UNITED STATES or, "under the color thereof" the validity and effect of which depends upon the law of nations.

Having shown on the above statement of facts the difference between the Defendant committed to the Respondent and my person who is held in custody under the color of authority of a foreign state, Petitioner states the following:

That I am detained by Respondent without a judgment and commitment order against my person.

That Respondent cannot show evidence that I, Luis Rafael Figueroa Hernandez, have ever been Indicted, found Guilty by Jury within the UNITED STATES to prove the legality of my detention.

That I am being sanctioned under the color of authority by the agent of the UNITED STATES federal government.

That I am being deprived of my life and liberty without being afforded the fundamental guarantees of Due Process.

That lawfully I cannot be charged with any crime against the UNITED STATES because I am not domiciled on federal territory.

That the instrumentality of the UNITED STATES exceeded it's authority and violated my

Constitutional Rights, because I am not domiciled on federal territory.

That my Rights are unalienable, meaning that they cannot be sold, transferred, or bargained away through a commercial process in relation to government.

That any enforcement authority by the UNITED STATES through the instrumentality named LUIS FIGUEROA, S.S. # 582-04-7964, against my person who is domiciled outside of the legislative jurisdiction of the UNITED STATES federal government is in violation of the separation of power and therefore in violation of the Constitution.

That the UNITED STATES federal government is without any legislative jurisdiction within the exterior boundaries of a sovereign state.

That if Respondent in the name of the UNITED STATES attempts to enforce any contract, Petitioner requests that the same be entered on record for the purpose of the Court to inquire upon the validity of the same based on all requisite elements of a valid contract.

That is the function of the "Writ of Habeas Corpus" to inquire upon a Right of an agency of government to deprive a person of his liberty at any stage, when the person is put in restraint by an

authority, the legitimacy of which, or of the edicts of which he challenges, and, perhaps, the most fundamental of these Rights, is the Right of a person to freedom, of which the individual cannot be deprived, even in times of war, except through the machinery which guarantees the fundamental Right of Due Process.

Therefore, Petitioner requests the Court to order the Respondent to show cause why I should not be granted the relief requested, or alternatively, to grant the relief requested.

Ground two: Held in Custody in violation of Article 4 of the UNITED STATES Constitution.

Supporting FACTS: On June 4, 1998 in the city of Ciales, Commonwealth of Puerto Rico, I, Luis Rafael Figueroa Hernandez was arrested by Federal and State Agents acting under the authority of the UNITED STATES without a Warrant against my person, contrary to the UNITED STATES Constitution that states:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things

to be seized." Article IV, United States Constitution.

Ground three: Held in custody in violation of Article 5 of the UNITED STATES Constitution.

Supporting FACTS: On June 4, 1998, in the City of Ciales, Commonwealth of Puerto Rico, I, Luis Rafael Figueroa Hernandez was arrested by Federal and State Agents acting under the authority of the UNITED STATES. Thereafter, without being INDICTED, Tried or Convicted, the Petitioner has been held in custody by the Respondent Terry O'Brian, in violation of the U.S. Constitution that states:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation." Article V, United States Constitution.

Ground four: N/A

Supporting FACTS: N/A

Having shown that Petitioner is held in custody by, or under the color of authority of a Foreign State, and having shown that the conduct of that authority violates the UNITED STATES CONSTITUTION because the Petitioner is not domiciled in federal territory, a valid question is presented to the Court and a Show Cause Order must be issued to the Respondent to show why the Petitioner should not be granted the relief requested.

RELIEF REQUESTED

Wherefore, Petitioner prays to the court that the order be issued discharging the petitioner of this unlawful restraint and or any other remedy as law and justice required.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 18, 2010.
(Date)

s/ LUIS RAFAEL FIGUEROA HERNANDEZ
(Signature)

(Signature of Attorney, if any)

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

LUIS RAFAEL FIGUEROA HERNANDEZ,	)	Case No. 7:10CV00027
Petitioner,	)	
v.	)	MEMORANDUM OPINION
TERRY O'BRIEN, WARDEN	)	By: Glen E. Conrad United States District Judge
Respondent.	)	

CLERK'S OFFICE U.S. DISTRICT COURT
AT ROANOKE VA – FILED

JAN 21 2010

JOHN E. CORCORAN, CLERK
BY s/, DEPUTY CLERK

Petitioner Luis Rafael Figueroa Hernandez, a federal inmate proceeding pro se, brings this action as a petition for a writ of habeas corpus, pursuant to

28 U.S.C. 2241.[11] Petitioner challenges the validity of his federal sentence based on his allegation that he was never indicted as well as on alleged constitutional violations. Upon review of the petition, the court concludes that petitioner has failed to demonstrate entitlement to relief under 2241.

Background

Petitioner alleges the following procedural facts related to his claims. He was convicted in March 2003 in the United States District Court for the District of New Jersey of conspiracy to possess with intent to distribute controlled substances and was sentenced to 420 months imprisonment. He also faces a thirty-year sentence for state court convictions that is running concurrent to his federal sentence.

As petitioner makes no clear statement of his claims, the court liberally construes his petition as alleging the following grounds for relief under 2241:

1. Petitioner suffers unlawful restraint of liberty because he was arrested and detained on June

---

[11] Petitioner is currently confined at the United States Penitentiary in Jonesville, Virginia ("USP Lee"), within the territorial jurisdiction of this court. Accordingly, this court has jurisdiction to address his habeas claims, provided they are properly raised under 2241. See Rumsfeld v. Padilla, 542 U.S. 426, 434-45 (2004).

3, 1998 without judgment and commitment orders being issued against his person;

2. The government has no evidence that petitioner has ever been indicted or found guilty by a jury;
3. Petitioner cannot be lawfully charged with any crime because he is not domiciled on federal territory;
4. Petitioner is held in custody in violation of "Article 4 of the United States Constitution," because he was arrested in Puerto Rico in 1998 without a warrant; and
5. Petitioner is held in custody in violation of "Article 5 of the United States Constitution," because he was arrested in Puerto Rico and then detained without indictment.

As relief, petitioner seeks an order discharging him from unlawful restraint.

Discussion

Petitioner's claims challenge the validity of his federal conviction and sentence, rather than the calculation of the term of confinement under that sentence. If a federal inmate wishes to challenge the validity of his sentence as imposed, he must ordinarily proceed by filing a motion under 28 U.S.C.A. § 2255 in the court in which he was convicted. In re Jones, 226 F.3d 328, 332 (4th Cir. 2000). Under very limited circumstances, an inmate

may challenge the legality of his conviction or sentence by filing a petition for a writ of habeas corpus, pursuant to § 2241:

> An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, *unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.*

§ 2255(e) (emphasis added). The United States Court of Appeals for the fourth Circuit has found that § 2255 is inadequate and ineffective to test the legality of an inmate's conviction when the inmate satisfies a three-part standard by showing that:

> (1) At the time of conviction settled law of this court or the Supreme Court established the legality of the conviction; (2) subsequent to the prisoner's direct appeal and first § 2255 motion, the substantive law changed such that the conduct of which the prisoner was convicted is deemed not to be criminal; and (3) the prisoner cannot satisfy the gatekeeping provisions of § 2255 because the new rule is not one of constitutional law.

Jones, 226 F.3d at 333-34.

Applying these principles to petitioner's claims, the court concludes that they must be dismissed. All of his claims, concerning technical problems with the arrest and charging process preceding his conviction, would have been cognizable in other proceedings, including trial and appeal, and under § 2255, if petitioner could show cause for failing to bring his claims earlier. See, e.g., Johnson v. United States, 544 U.S. 295, 305-06 (2005). Thus, petitioner can bring the claims under § 2241 only if he proves under Jones that § 2255 is an inadequate or ineffective remedy. He fails to do so. He does not point to any intervening change in "substantive law" under which his federal offense conduct – conspiracy to possess controlled substances with intent to distribute – is no longer criminal, and the court is unaware of any such change in law.

Conclusion

Based on the foregoing, the court concludes that petitioner cannot meet the elements of the Jones standard so as to allow the court to address his claims under § 2241. Jones, 226 F.3d at 333-34. Therefore, the § 2241 petition must be dismissed. An appropriate order will issue this day.

The petitioner is advised that he may appeal this decision, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure, if a judge of the United States Court of Appeals for the Fourth

Circuit or this court issues a certificate of appealability, pursuant to 28 U.S.C. § 2253©. A certificate of appealability may issue only if the applicant has made a substantial showing of the denial of constitutional right. § 2253©(1). Petitioner has failed to demonstrate "a substantial showing of the denial of constitutional right." Therefore, this court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322 (2003); Slack v. McDaniel, 529 U.S. 473 (2000). If petitioner intends to appeal and seek a certificate of appealability from the United States Court of Appeals for the Fourth Circuit, his first step is to file a notice of appeal with this court within 30 days of the date of entry of this memorandum opinion and the accompanying order, or within such extended period as the court may grant pursuant to Rule 4(a)(5).

The Clerk is directed to send copies of this memorandum opinion and accompanying order to petitioner and counsel of record for the respondent.

ENTER: This 21st day of January, 2010.

s/ GLEN E. CONRAD
United States District Judge

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

LUIS RAFAEL FIGUEROA HERNANDEZ,	)	
	)	Case No. 7:10CV00027
Petitioner,	)	
	)	
v.	)	FINAL ORDER
	)	
TERRY O'BRIEN, WARDEN	)	By: Glen E. Conrad United States District Judge
Respondent.	)	

In accordance with the accompanying memorandum opinion, it is hereby

ORDERED

that the petition for a writ of habeas corpus, pursuant to 28 U.S.C. § DISMISSED, and this action is stricken from the active docket of the court.

ENTER: This 21st day of January, 2010.

s/ GLEN E. CONRAD
United States District Judge

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
(ROANOKE DIVISION)

LUIS RAFAEL FIGUEROA HERNANDEZ,	)	
Petitioner,	)	Case No. 7:10CV00027
	)	Glen E. Conrad
v.	)	United States District Judge
TERRY O'BRIEN, WARDEN	)	
Respondent.	)	

MOTION FOR RECONSIDERATION PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURES 59(E) OF AN ORDER ENTERED BY THIS COURT DISMISSING PETITIONER'S HABEAS CORPUS REQUEST UNDER TITLE 28 USC 2241(C)(3) AND (4)

Now Comes Petitioner Luis Rafael Figueroa Hernandez, acting Pro-Se, respectfully files this motion for reconsideration from a denial of "WRIT

OF HABEAS CORPUS PETITION" by an order entered by the Honorable Judge Glen E. Conrad on January 21, 2010 and in support of the same states the following to wit:

STATEMENT OF PETITIONER

In Petitioner's judgment the following situation exists for the purpose of this motion. The material facts and the law was "overlooked" by the court in reaching his decision and for the same reasons the court accrued to a grossly unfair outcome in the judicial proceeding. Petitioner also claims that the liberal construction was misused by the court and for the same reasons the court misrepresented the facts petitioner presented to the court for its adjudication and therefore this court must reconsider his judgment to prevent a "MANIFEST INJUSTICE".

The term "OVERLOOKED" is the "operative term" in a motion for reconsideration that allows a party to request the District Judge to reconsider his prior decision upon showing that dispositive factual matters were "overlooked" by the court in reaching his prior decision. The motion must be filed within ten (10) days after entry of the order.

Now, based on the operative term "OVERLOOKED", petitioner will point out all

dispositive factual matters "overlooked" by the court in reaching its prior decision and that if properly decided by the court the outcome of the prior proceeding will be favorable to the petitioner. Now, because the court disregarded the complaint as presented in its entirety, petitioner requests this honorable court to reconsider its ruling and make a factual determination in regards to the following:

1.) Whether the defendant charged in the superseding indictment #98-105-0014, is in fact an Instrumentality of the United States.
2.) Whether the Petitioner is a separate person than the one charged in the superseding indictment #98-105-0014.
3.) Whether the entity named LUIS FIGUEROA, Social Security # _____ is in fact an agency or instrumentality of the UNITED STATES, as claimed by the petitioner in original complaint.
4.) Whether the respondent is in fact detaining the petitioner by a color of authority of that entity.
5.) Whether the petitioner complied with the statutory requirements and is entitled to relief as provided by Title 28 U.S.C. 2241(c)(3) and (4).
6.) Whether or not the petitioner is held in custody by an authority of the United States and if so whether or not the petitioner is held

in custody in violation of the United States Constitution as alleged in the original complaint.

7.) Whether there is discrimination by the court when it comes to properly applying the facts and the law but the court refuses or decides not to.

8.) Whether or not this court's refusal to address petitioner's complaint as presented and its refusal to address this petition for reconsideration is a testament to this courts intention to deny petitioner access to the court, in violation of petitioner's First Amendment right to petition the government for redress of my grievances.

CONCLUSION

For the reasons stated in this motion for reconsideration, petitioner requests this honorable court to resolve the dispositive matters so that the court can render a fair and just decision to both parties in the particular process and failure to do so will constitute a breach of duty on the part of the judicial officer.

Executed on January 28, 2010.

Respectfully Submitted

s/ LUIS RAFAEL FIGUEROA HERNANDEZ

Luis Rafael Figueroa Hernandez

I, Luis Rafael Figueroa Hernandez, the petitioner, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

s/ LUIS RAFAEL FIGUEROA HERNANDEZ

Luis Rafael Figueroa Hernandez

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
(ROANOKE DIVISION)

LUIS RAFAEL FIGUEROA HERNANDEZ,	)	
Petitioner,	)	Case No. 7:10CV00027
	)	Glen E. Conrad
v.	)	United States District Judge
TERRY O'BRIEN, WARDEN	)	
Respondent.	)	

CLERK'S OFFICE U.S. DISTRICT COURT
AT ROANOKE VA – FILED

JAN 29 2010

JOHN E. CORCORAN, CLERK
BY s/, DEPUTY CLERK

PETITIONER OBJECTS TO THE APPLICATION/OR MISUSE OF THE LIBERAL CONSTRUCTION APPLIED BY THE UNITED STATES DISTRICT JUDGE TO THE FACTS PRESENTED IN PETITIONER'S COMPLAINT

BECAUSE THE LIEBRAL CONSTRUCTION IS BEING USED IN A WAY THAT IS DETRIMENTAL TO AND AGAINST THE BEST INTEREST OF THE PETITIONER

LIBERAL CONSTRUCT VS. MISREPRESENTATION

Black's Law Dictionary:

> **Liberal Construction** ... expands the meaning of the statute to embrace cases which are clearly within the spirit or reason of the Law, or within the evil which it was designated to remedy, "provided such interpretation is not inconsistent with the language used." It resolves all reasonable doubts in favor of the applicability of the statute to the particular case.
>
> **Misrepresentation** ... being a false assertion of the facts, commonly takes the form of spoken or written words. Whether a statement is false depends on the meaning of the words in all the circumstances, including what may be inferred from them. An assertion may also be inferred from the conduct other than words. Concealment or even non-disclosure may have the effect of misrepresentation because of ignorance or carelessness, as when the word "not" is inadvertently omitted or when inaccurate language is used. But misrepresentation that is not fraudulent has no consequences... unless it is material."

Now, after stating the meanings of liberal construction and misrepresentation, petitioner will show why this court's liberal construction of petitioner's complaint was detrimental and contrary to the best interest of the petitioner and petitioner respectfully request this court rule on petitioner's complaint and the reconsideration now submitted, even if the court denies either or both in its entirety.

Petitioner now clarifies the following facts that were overlooked by the court:

Petitioner states in his complaint that a True Bill #98-105-0014 was returned by a Grand Jury charging an Instrumentality of the United States, namely LUIS FIGUEROA Social Security No. _____ with violation of 21 USC 846. Petitioner states that he is "NOT" the instrumentality known as LUIS FIGUEROA Social Security No. _____ and further shows, through facts that:

On June 4, 1998 Petitioner, Luis Rafael Figueroa Hernandez, the Private Man, who is a citizen of the Commonwealth of Puerto Rico, domiciled therein, was arrested by Federal and State agents and held in custody for an act done or omitted under an alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of the United States or, "under the color thereof", the validity and effect of which depends upon the Law of Nations.

Petitioner clearly showed in his complaint the difference/distinction between the defendant committed to the respondent Mr. Terry O'Brien (Warden), and the Petitioner. The former being an instrumentality of the United States committed to the custody of the Respondent. The Court, in its liberal construction of Petitioner's complaint declined or failed to address petitioner's claim of the foregoing distinction/difference and consequently failed to dispute petitioner's supporting facts as they relate to such claim.

Petitioner's complaint derives its merit and validity from the supporting facts that the court failed to address. The court's liberal construction of Petitioner's complaint misrepresented the facts raised therein. In the court's ruling, after its liberal construction of petitioner's complaint, the court claims petitioner's complaint "challenges the validity of his federal conviction and sentence rather than the calculation of the term of his confinement under that sentence." However, absent the court's liberal construction, the court would have seen that Petitioner's complaint challenges the authority used to trespass upon his unalienable constitutional rights as a private man to not be deprived of his liberty.

The court also omitted a number of facts petitioner raised in his complaint. The court's reason for liberally construing petitioner's complaint was

because "petitioner makes no clear statement of his claims." However, if the court applies the liberal construction properly, based on the complaint and the statutory requirement, it would ultimately make petitioner successful and entitle the petitioner to the relief he requested.

Wherefore, petitioner respectfully requests that if this court is going to use liberal construction on petitioner's pleadings petitioner prays that this court will use this construction in the way it was intended, or in the alternative, not use the liberal construction at all.

Executed on January 28, 2010.

Respectfully Submitted
s/ LUIS RAFAEL FIGUEROA HERNANDEZ
Luis Rafael Figueroa Hernandez

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

LUIS RAFAEL FIGUEROA HERNANDEZ,	)	
Petitioner,	)	Case No. 7:10CV00027
v.	)	ORDER
TERRY O'BRIEN, WARDEN	)	By: Glen E. Conrad United States District Judge
Respondent.	)	

CLERK'S OFFICE U.S. DISTRICT COURT
AT ROANOKE VA – FILED

FEB 18 2010

JOHN E. CORCORAN, CLERK
BY s/, DEPUTY CLERK

Petitioner has filed a motion for reconsideration of the court's memorandum opinion and order entered January 21, 2010, dismissing his petition for a writ of habeas corpus, pursuant to 28

U.S.C. § 2241. He argues that in reaching its decision, the court misconstrued some facts that petitioner believes are relevant to the outcome of his arguments under § 2241, such as that he is a citizen of the Commonwealth of Puerto Rico and is allegedly not the person named in the superseding indictment. In response to the motion, the court has reviewed the relevant facts and law on which the case was decided and finds no ground on which the judgment previously entered should be altered or amended in any way. Accordingly, it is hereby

ORDERED

That petitioner's motion (Dkt. No. 4) is DENIED.

ENTER: This 18th day of February, 2010.

s/ GLEN E. CONRAD
United States District Judge

A TRUE COPY, TESTE:
JOHN F. CORCORAN, CLERK
BY: /s
DEPUTY CLERK

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LUIS RAFAEL FIGUEROA HERNANDEZ,	)	
Petitioner,	)	Case No. 7:10CV00027 Glen E. Conrad United States District
v.	)	Judge
TERRY O'BRIEN, WARDEN	)	

CLERK'S OFFICE U.S. DISTRICT COURT
AT ROANOKE VA – FILED

FEB 12 2010

JOHN E. CORCORAN, CLERK
BY s/, DEPUTY CLERK

NOTICE OF APPEAL PURSUANT
FEDERAL RULES OF APPELLATE
PROCEDURES RULES 3 AND 4

Now comes Petitioner, Luis Rafael Figueroa Hernandez, pro-se, filing this notice of appeal of the order issued by the Honorable Judge Glen E. Conrad denying Petitioner's Habeas Corpus Petition under Title 28 USC 2241(c)(3) and (4) entered by this court on January 21, 2010, civil #7:10cv00027.

Executed on February 10, 2010.

Respectfully Submitted
s/ LUIS RAFAEL FIGUEROA HERNANDEZ
Luis Rafael Figueroa Hernandez

CERTIFICATE OF SERVICE

I, Luis Rafael Figueroa Hernandez, hereby declare under penalty of perjury 28 USC 1746, that a True and Correct copy of the foregoing motion was placed in the institution mailing room here at U.S.P. Lee County on ____ 2010 and the same was forwarded to the following parties postage pre-paid:

1.) United States District Court Clerk
John F. Corcoram
P.O. Box 1234
Roanoke, VA 24006

2.) Terry O'Brien, Warden
UNITED STATES PENITENTIARY
Lee County

P.O. Box 900
Jonesville, VA 24263-0900

Executed on _____, 2010.

Respectfully Submitted
s/ LUIS RAFAEL FIGUEROA HERNANDEZ
Luis Rafael Figueroa Hernandez

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

LUIS RAFAEL FIGUEROA HERNANDEZ,	)	
Petitioner,	)	
v.	)	Case No. 7:10CV00027
TERRY O'BRIEN, WARDEN	)	Glen E. Conrad United States District Judge

CLERK'S OFFICE U.S. DISTRICT COURT
AT ROANOKE VA – FILED

FEB 23 2010

JOHN E. CORCORAN, CLERK
BY s/, DEPUTY CLERK

AMENDED NOTICE OF APPEAL PURSUANT FEDERAL RULES OF APPELLATE PROCEDURES RULES 3(C) AND 4(A)(4)(A)(ii)

NOW COMES Petitioner Luis Rafael Figueroa Hernandez, Pro Se, filing this notice of appeal of the

order issued by the Honorable Judge Glen E. Conrad denying Petitioner's Habeas Corpus Petition under Title **28 U.S.C. 2241(C)(3)** and **(4)** entered by this Court on Jan 21, 2010, Civil No. 7:10cv00027, and the denial of the subsequent Motion for Reconsideration pursuant to **Rule 59(e)** entered on February 18, 2010.

Respectfully Submitted
s/ LUIS RAFAEL FIGUEROA HERNANDEZ
Luis Rafael Figueroa Hernandez 16077-069
U.S.P.LEE UNIT E
P.O.BOX 305
JONESVILLE, VA 24263

DATED: February 21, 2010

CERTIFICATE OF SERVICE

I, Luis Rafael Figueroa Hernandez, Pro Se litigant, hereby declare under penalty of perjury, pursuant to **28 USC 1746**, that a True and Correct copy of the foregoing motion was placed in the institution mailing room here at U.S.P. Lee County on the date of February 21, 2010 and the same was forwarded to the following parties postage pre-paid:

1.) UNITED STATES DISTRICT COURT CLERK
John F. Corcoram
P.O. Box 1234
Roanoke, VA 24006

2.) Terry O'Brien, Warden
UNITED STATES PENITENTIARY
LEE COUNTY
P.O. Box 900
Jonesville, VA 24263-0900

Executed on _____, 2010.

RESPECTFULLY SUBMITTED
s/ LUIS RAFAEL FIGUEROA HERNANDEZ
Luis Rafael Figueroa Hernandez 16077-069
U.S.P. LEE
P.O. BOX 305
JONESVILLE, VA 24263

CC:

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

INFORMAL BRIEF

No. 10-6265, Luis Figueroa-Hernandez v. Terry O'Brien

7:10-cv-00027-gec-mfu

FILED
MAR 08 2010
U.S. Court of Appeals
Fourth Circuit

1. **Jurisdiction (for appellants/petitioners only)**
   a. Name of the Court or agency from which review is sought: UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF VIRGINIA
   b. Date(s) of order or orders for which review is sought: January 21, 2010 [at docket #3] & February 18, 2010 [at docket # 9]
2. **Timeliness of notice of appeal or petition for review (for prisoners only)**
   Exact date on which notice of appeal or petition for review was placed in institution's internal mailing system for mailing to court:

Notice of Appeal for docket # 6 mailed on February 10, 2010 & Notice of Appeal for docket # 11 mailed on February 22, 2010.

3. **Issue for Review**

Use the following spaces to set forth the facts and argument in support of the issue you wish the Court of Appeals to consider. The parties may cite case law, but citations are not required.

Issue 1. Whether the Court abused its discretion in dismissing Petitioner's cognizable claim pursuant to 28 U.S.C.S. § 2241 et seq. (c)(3) and (c)(4).

Supporting Facts and Argument. On January 20, 2010 [at docket #1] Petitioner filed within the Court a Habeas Corpus Petition Pursuant to 28 U.S.C.S. § 2241 et seq. (c)(3) and (c)(4) in which Petitioner alleges:

1) Unlawful Restraint of Liberty;
2) Held in custody in violation of Amendment IV of the United States Constitution; and
3) Held in custody in violation of Amendment V of the United States Constitution.

On January 21, 2010 [at docket # 2 and 3] the aforementioned Petition was denied by the Honorable Judge Glen E. Conrad stating "As Petitioner makes no clear statement of his claims, the Court liberally construes his petition..."

Furthermore, the Court then misrepresented Petitioner's facts and law, wherein, the facts and law supported a cognizable claim under 28 U.S.C.S. § 2241 et seq.. The Court liberally construed Petitioner's complaint as alleging the following grounds for relief;

1. Petitioner suffers unlawful restraint of liberty because he was arrested and detained on June 3, 1998 without judgment and commitment order being issued against his person;
2. The government has no evidence that Petitioner has been indicted or found guilty by a Jury;
3. Petitioner cannot be lawfully charged with any crime because he is not domiciled on Federal territory;
4. Petitioner is held in custody in violation of "Amendment IV of the United States Constitution," because he was arrested in Puerto Rico in 1998 without a warrant; and
5. Petitioner is held in custody in violation of "Amendment V of the United States Constitution," because he was in Puerto Rico and then detained without indictment.

As relief, Petitioner seeks an order discharging him from UNLAWFUL RESTRAINT. Thereafter the Court claimed that Petitioner challenged the validity of his federal conviction and sentence, rather than the calculation of the term of

confinement under the sentence. Applying the principles in In re Jones, 226 F.3d 328, 332 (4th Cir. 2000), to Petitioner's claims the Court concludes that they must be dismissed.

The Appellant now challenges the District Court ruling on the aforementioned petition:

Luis Figueroa-Hernandez labeled as Petitioner filed the aforementioned Petition stating that on June 3, 1998 a Grand Jury issued an indictment in the United States District Court for the District of New Jersey (indictment no. 98-105-0014), charging an **instrumentality** of the United States, namely: **LUIS FIGUEROA, Social Security Number 000-00-7964**, with conspiracy to possess with intent to distribute a controlled substance contrary to 21 U.S.C. § 846.

Petitioner clearly states that he is a **Private Man, citizen of the Commonwealth of Puerto Rico**, and is a **Separate Person** from the **Legal Person Instrumentality (S.S. # 000-00-7964)**, that was indicted on June 3, 1998, and committed to the custody of the Respondent, wherefore; he is now being detained unlawfully, even though he was never **indicted, arraigned, convicted** or **sentenced**, as the True Bill of Indictment no. 98-105-0014 referred to the **Instrumentality (S.S. # 000-00-7964)**, and not Luis Figueroa-Hernandez, the **Natural Person**. Therefore it is clear that Petitioner's claim is related

to the execution as opposed to the imposition of the sentence. See [docket #1] at pages 3-5.

Furthermore, Petitioner complied with the requirements of § 2241(c)(4) which entitled Petitioner to file his claim as being a citizen of the Foreign State domiciled therein, is in custody for an act done or omitted under any alleged right, title, authority, privilege, protection, or exemption claimed under the commission, order or sanction of a foreign state, or under the color thereof, the validity and effect of which depends upon the law of nations.

Thereafter Petitioner prevailed in supporting his contentions to use **§ 2241 et seq.**, specifying (c)(3) quoting in pertinent part "(c) the Writ of Habeas Corpus shall not extend to a person unless ... (3) He is in custody in violation of the Constitution or laws or treaties of the United States."

THE FOURTH AMENDMENT OF THE CONSTITUTION [1791]:

> The right of people to be secure in their persons ... shall not be violated, and no warrants shall be issued, but upon reasonable cause, supported by oath or affirmation and particularly describing the place to be searched, and the person or things to be seized.

The warrants that was used to obtain my person was issued by a magistrate Judge who has

the authority to issue such warrants, but this specific warrant was issued against the **Instrumentality (LUIS FIGUEROA, Social Security Number 000-00-7964)** which led to the misapplication of the search warrant and the unlawful obtaining of me, Luis Rafael Figueroa Hernandez, a man, in violation of the IV Amendment of the United States Constitution. See [docket #1] at page 5 subsection B.

THE FIFTH AMENDMENT OF THE CONSTITUTION [1791]:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor be **deprived of life, liberty,** or property **without due process of law**.

The Fifth Amendment clearly speaks for itself, the amendment states that Mr. Luis Figueroa-Hernandez should not be "held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury ... nor be deprived of life, liberty, or property, without due process of law."

Since it has already been stated by Petitioner's argument that he is a **Separate Person** from the **Instrumentality (LUIS FIGUEROA, S.S. # 000-00-7964)** that was **indicted, arraigned, convicted, and sentenced** it is plain on its face the **Mr. Luis Figueroa-Hernandez (a man)** has been deprived of

life, and liberty without due process of law, in reference to being unlawfully detained without being indicted by a Grand Jury.

THE COURT MISREPRESENTING PETITIONER'S FACTS:

The Court supports it's denial by claiming "All of his [Petitioner's] claims, concerning technical problems with the arrest and charging process preceding his conviction, would have been cognizable in other proceedings, including trial, appeal, and under § 2255, if Petitioner could show cause for failing to bring his claim earlier."

The Court's presumption of "technical problems with the arrest and charging process preceding his conviction" is far fetched, because Petitioner claimed that he has never been indicted, convicted, or sentenced, and none of the Court's contentions can support an explanation for Mr. Luis Figueroa-Hernandez (a man) being held in custody by Warden O'Brien at United States Penitentiary Lee County.

Furthermore, the court then concluded that Petitioner can bring a claim under § 2241 only if he proved under In re Jones, that § 2255 is an inadequate or ineffective remedy. He fails to do so. He does not point to any intervening change in "substantive law" under which his federal offense

conduct – conspiracy to possess controlled substance with intent to distribute – is no longer criminal, and the Court is unaware of any such change in law.

Petitioner's claim was based on the "Protection of the Great Writ," wherein it protects Petitioner(s) from being held in custody unlawfully and in violation of the Constitution of the United States, furthermore, with that being said there was no need to address any "substantive law changes such that the conduct of which the person was convicted is deemed not to be criminal," because Petitioner states that he is being detained by Respondent without being **indicted, convicted,** or **sentenced** of any charges. Therefore it would be impossible for the Court to determine that Mr. Figueroa-Hernandez is challenging a conviction or **sentence** against his person, that does not exist! Therefore, the Court abused its discretion in dismissing Petitioner's complaint based on these misrepresentations.

Issue 2. Whether the Court abused it's discretion when denying Petitioner's subsequent motions on 12/18/2010 [at docket # 9] for reconsideration and objections to the application or misuse of liberal construction filed on January 29, 2010 [at docket # 4 and 5], in reference to clarifying the Court's misrepresenting the facts and law in Petitioner's prior motion [at docket #1] (28 U.S.C.S. § 2241 et seq.).

Supporting Facts and Argument. On January 29, 2010 Petitioner filed a motion for reconsideration pursuant to **Rule 59(e)** and objections to application or misuse of the liberal construction in reference to the Court's denial of the original Petition (28 U.S.C.S. § 2241 et seq.) at [docket # 3].

Petitioner alleges that "material facts and law were 'OVERLOOKED' by the Court in reaching its decision and for the same reason the Court accrued to grossly unfair outcome in the judicial proceeding and it was necessary for the Court to alter or amend the judgment in order to prevent manifest injustice."

Petitioner then requested the Court to reconsider its ruling and make a factual determination in regards to several questions that would have determined Petitioner's averments in his original claim, review question at [docket # 4] page 2, subsection 1 through 8, in motion for reconsideration.

Thereafter, Petitioner objected to the application or misuse of liberal construction applied by the United States District Judge, Appellant avers that the Honorable Judge Conrad used deceiving tactics in liberally construing Petitioner's claims as if he had no idea of the roots and foundation Petitioner claims were presented and based on, and therefore, used the "liberal construction" practice in the best

interest of the government to dismiss Petitioner's claim.

Petitioner's claim was then magnified and clarified by means of elementary terms through an objection [at docket # %] in a similar fashion to that as Issue # 1 of this memorandum. See [docket # 5] at pages 2-3 of objection.

On February 18, 2010 [at docket # ([the Honorable Judge Conrad denied Petitioner's motion claiming "[i]n response to the motion the Court has reviewed the relevant facts and law on which the case was decided and finds no grounds on which the judgment previously entered should be altered or amended in any way. Accordingly, it is hereby ordered that Petitioner's motion (Dket No. 4) is DENIED."

The Appellant now challenges the District Court ruling on the aforementioned points and requests that this Court review the entire record to decide whether the District Court had substantive details present during its review of the motion for reconsideration and objection, that would have revealed that its previous decision was erroneous and contrary to the law, which was presented by Petitioner's facts and law in his original complaint, establishing that the Honorable Judge Conrad abused his discretion in dismissing Petitioner's Habeas Corpus Petition.

Furthermore, the District Court failed to recognize that as the moving party, Petitioner is the master of the suit who decides what law and facts are relied upon in his declaration, or bill. Therefore, the Court abused it's discretion in disregarding Petitioner's complaint.

Issue 3. Whether the Court's misrepresentation which led to the dismissal of the case, deprived Petitioner access to the Courts.

Supporting Facts and Arguments. On January 20, 2010, Petitioner filed a Writ of Habeas Corpus pursuant to **28 U.S.C.S. § 2241 et seq.**, at [docket # 1], on January 21, 2010, this Petition was denied [at docket #3] quoting "As Petitioner makes no clear statement of his claims, the Court liberally construes his petition ... Applying the principles in In re Jones, to Petitioner's claims the Court concludes that they must be dismissed."

Appellant now contends that the Court construed his Petition inappropriately in applying the principles in In re Jones to Petitioner's claims, which led to the dismissal of his petition, thus violating Petitioner's First Amendment right to access to the Courts.

Petitioner's claims were pursuant to being unlawfully restrained of liberty and the proper remedy to address such claims are **§ 2241 et seq.**,

and not the requirements of the § 2255 saving clause, because it is inapplicable to such claims, in reference to the Judge intentionally referring to the principles in In re Jones it allowed him to divert from addressing Appellant's claims on the merits, and furthermore, in even having to address the claims in general.

This type of unethical behavior from a Judicial Officer hinders Mr. Luis Figueroa Hernandez from having access to the Court in its entirety, and does not allot him a chance to have the proper review of his claims, as the law prescribes.[12]

It is well established that inmates have a fundamental right to "adequate, effective, and meaningful" access to Courts. However, in order to prove that this right has been violated, an inmate must show specific harm to his litigation efforts. The requirements of actual injury have been held to

---

[12] It is a common practice of specifically this District Court, and specifically this Judge, to misrepresent Petitioner(s) claims to avoid addressing meritorious claims, to prevent granting the required relief. Furthermore, Mr. Luis Figueroa-Hernandez, after recognizing the aforementioned behavior by the Court, filed a Preliminary Injunction and Complaint with the Chief Judge James P. Jones, to exercise his supervisory powers over the District Court. This complaint was intentionally delegated to the lower ranking Judge in the District Court who doesn't have supervisory powers over the U.S.D.J. in an attempt to prevent this complaint from being heard. See [docket #10] referring to Magistrate Judge Michael F. Urbanski.

mean that it actually impeded his access to the Court. Therefore, the Court's conduct precluded Petitioner's claims from being heard, thus he was denied access tot eh Court.

4. **Relief Requested**
   Identify the precise action you want the Court of Appeals to take:

Petitioner requests that the Appeals Court address all three issues in this Informal Brief separately, with interest, and after reviewing them vacate the District Court Judgment dismissing the case and remand the case with specific instructions to address Petitioner's claims as presented, or in alternative; this Court address Petitioner's claims and grant the relief requested in the original petition to the District Court and/or **any other remedy as law and justice requires.**

5. **Prior appeals for appellants (for appellants/petitioners only)**
   a. Have you filed other cases in this Court? Yes [ ] No [X]
   b. If you checked YES, what are the case names and docket numbers for those appeals and what was the ultimate disposition of each?

s/ LUIS RAFAEL FIGUEROA HERNANDEZ
Signature
[Notarization Not Required]

LUIS RAFAEL FIGUEROA-HERNANDEZ
[Please Print Your Name Here]

CERTIFICATE OF SERVICE

****

I certify that on March 4, 2010 I served a copy of this Informal Brief on all parties, addressed as shown below:

UNITED STATES DISTRICT COURT
Office of the Clerk
P.O. Box 1234
Roanoke, VA 24006

UNITED STATES COURT OF APPEALS
1100 East Main Street
Richmond, VA 23219

TERRY O'BRIAN, WARDEN
P.O. Box 900
Jonesville, VA 24263

s/ LUIS RAFAEL FIGUEROA HERNANDEZ

Signature

UNPUBLISHED
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6265

LUIS RAFAEL FIGUEROA-HERNANDEZ,

Petitioner – Appellant,

v.

TERRY O'BRIEN, Warden,

Respondent – Appellee.

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Glen E. Conrad, District Judge. (7:10-cv-00027-gec-mfu)

Submitted: April 29, 2010 Decided: May 4, 2010

Before MOTZ and DUNCAN, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion.

Luis Rafael Figueroa-Hernandez, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Luis Rafael Figueroa-Hernandez, a federal prisoner, appeals the district court's order denying relief on his 28 U.S.C. § 2241 (2006) petition, and his subsequent motion for reconsideration. We have reviewed the record and find no reversible error. Accordingly, we affirm for the reasons stated by the district court. Figueroa-Hernandez v. O'Brien, No. 7:10-cv-00027-gec-mfu (W.D. Va. Jan. 21, 2010, Feb. 18, 2010). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 10-6265
(7:10-CV-00027-GEC-MFU)

LUIS RAFAEL FIGUEROA-HERNANDEZ,

Petitioner – Appellant,

v.

TERRY O'BRIEN, Warden,

Respondent – Appellee.

J U D G M E N T

In accordance with the decision of this Court, the judgment of the District Court is affirmed.

This judgment shall take effect upon issuance of this Court's mandate in accordance with Fed. R. App. P. 41.

s/ PATRICIA S. CONNOR, CLERK